

## SENATE BILL No. 209

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-31.

**Synopsis:** Community investment tax credits. Establishes a community investment tax credit against state tax liability for investments that: (1) qualify for a federal new market tax credit against federal income tax liability; and (2) are made by a community investment entity that agrees: (A) to reinvest 100% of the community investment entity's allocation of federal new market tax credits for low income communities in Indiana; (B) to invest at least 80% of the community investment entity's total assets in low income community businesses in Indiana; and (C) to continue to reinvest at least 30% of the last state certified investment in eligible businesses for a period of at least 14 years after the last credit allowance date for the community investment entity's last state certified investment.

**Effective:** January 1, 2007 (retroactive).

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January 8, 2007, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2007 (RETROACTIVE)]:

4       **Chapter 31. Community Investment Tax Credit**

5       **Sec. 1. As used in this chapter, "affiliate" means the following:**

6           (1) A parent entity that owns a controlling interest in a  
7           federally qualified community development entity.

8           (2) Any subsidiary of a parent entity described in subdivision

9           (1) that qualifies as a federally qualified community  
10          development entity.

11       **Sec. 2. As used in this chapter, "applicable percentage" means**  
12       **five percent (5%) for each credit allowance date.**

13       **Sec. 3. As used in this chapter, "certified development entity"**  
14       **refers to a federally qualified community investment entity that is**  
15       **certified by the Indiana economic development corporation as a**  
16       **certified development entity under section 20 of this chapter.**

17       **Sec. 4. As used in this chapter, "eligible business" means a**

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business that:

- (1) qualifies as a low income community business; and
- (2) is located in Indiana.

Sec. 5. As used in this chapter, "federal credit" refers to a new market tax credit granted under Section 45D of the Internal Revenue Code against federal income tax liability.

Sec. 6. As used in this chapter, "federally qualified community development entity" refers to a qualified community development entity (as defined in Section 45D of the Internal Revenue Code) that has an allocation of federal credits.

Sec. 7. As used in this chapter, "federally qualified equity investment" refers to a qualified equity investment (as defined in Section 45D of the Internal Revenue Code) that qualifies a federal taxpayer for a federal credit.

Sec. 8. As used in this chapter, "holder", with respect to a credit allowance date, refers to one (1) of the following:

- (1) The taxpayer or pass through entity that makes the original state certified investment, if the taxpayer or pass through entity owns the state certified investment on a credit allowance date.
- (2) A subsequent taxpayer or pass through entity that owns the state certified investment on a credit allowance date.

Sec. 9. As used in this chapter, "low income community business" refers to a business that qualifies as a qualified active low income community business (as defined in Section 45D of the Internal Revenue Code).

Sec. 10. As used in this chapter, "pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership;

that is not subject to state tax liability.

Sec. 11. As used in this chapter, "reinvestment in low income communities in Indiana" refers to the use of the assets of a federally qualified community development entity for:

- (1) a capital or equity investment or loan to an eligible business;
- (2) an equity investment in or a loan to a federally qualified community development entity that is located in Indiana;
- (3) the delivery of financial counseling or other services to a

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business in or resident of Indiana; or

(4) a purchase from another federally qualified community development entity of loans that are made to an eligible business;

that qualifies as a qualified low income community investment (as defined in Section 45D of the Internal Revenue Code).

Sec. 12. As used in this chapter, "state certified investment" refers to a federally qualified equity investment that is certified by the Indiana economic development corporation as eligible for a state credit.

Sec. 13. As used in this chapter, "state credit" refers to a credit granted under this chapter against state tax liability.

Sec. 14. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax); and
- (3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 15. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 16. (a) Each taxable year, a holder that holds a state certified investment on a credit allowance date that falls within the taxable year is entitled to a community investment tax credit against the holder's state tax liability for the taxable year.

(b) The amount of the credit provided by this section for a taxable year is the amount equal to:

- (1) the amount of state certified investment held by the taxpayer on the credit allowance date; multiplied by
- (2) the applicable percentage for the credit allowance date.

(c) A taxpayer may claim the credit provided by this section only to the extent that the holder does not claim another credit against state tax liability under any other law for the same certified investment.

Sec. 17. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by

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(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 18. (a) If the amount of a state credit for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the state credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a state credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of an unused state credit.

Sec. 19. To apply a state credit against the taxpayer's state tax liability, a taxpayer must claim the state credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a state credit shall submit to the department a copy of the certification letter issued by the Indiana economic development corporation under section 21 of this chapter for the state certified investment that entitles the taxpayer to a state credit. In addition, the taxpayer shall submit to the department any additional information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the state credit.

Sec. 20. (a) The Indiana economic development corporation shall establish a program to certify federally qualified community investment entities as certified development entities.

(b) An applicant must apply to the Indiana economic development corporation for certification in the manner and on the certified development entity application form prescribed by the corporation.

(c) The Indiana economic development corporation shall certify an applicant as a certified development entity only if:

- (1) the applicant is a federally qualified community investment entity;
- (2) the applicant or its affiliates have a record of successfully providing capital or other financing to eligible businesses located in Indiana;
- (3) the applicant or its affiliates have a record of successfully reinvesting federally qualified equity investments in Indiana;
- (4) the applicant and its affiliates by agreement with the corporation commit to allocate one hundred percent (100%) of the applicant's and the affiliates' allocation of federal

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credits for reinvestment in low income communities in Indiana;

(5) the applicant and its affiliates, by agreement with the corporation, commit to continue to loan to or otherwise reinvest in eligible businesses for at least fourteen (14) years after the last credit allowance date for the entity's last state certified investment at least thirty percent (30%) of the applicant's and the affiliates' state certified investments; and (6) the applicant by agreement with the corporation commits to invest at least eighty percent (80%) of the applicant's aggregate gross assets (including reserves) in eligible businesses.

Sec. 21. (a) The Indiana economic development corporation shall establish a program to certify federally qualified equity investments as state certified investments.

(b) The Indiana economic development corporation may certify a federally qualified equity investment as a state certified investment only if:

- (1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the corporation; and
- (2) the certified development entity that designates the qualified equity investment for a state credit and the certified development entity's affiliates are in compliance with the agreements entered into by the certified development entity and its affiliates under section 20 of this chapter.

(c) The certification of a federally qualified equity investment under this section applies only to credit allowance dates that occur after the certification is made by the Indiana economic development corporation.

Sec. 22. (a) An action by the federal government under Section 45D of the Internal Revenue Code to disallow or recapture a federal credit for a qualified equity investment terminates the state credit only to the extent that the Indiana economic development corporation disallows or recaptures the state credit under this section.

(b) A holder of a state certified investment shall notify the Indiana economic development corporation if the holder's federal credit for the state certified investment is disallowed or otherwise recaptured.

(c) If the federal credit granted for a state certified investment is disallowed or recaptured, the Indiana economic development

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corporation may:

- (1) disallow the use of a part of the related unused state credit;
- (2) recapture a part of the related state credit that has been applied to the state tax liability of a taxpayer; or
- (3) both disallow under subdivision (1) and recapture under subdivision (2) the state credit.

The maximum percentage of the state credit that may be disallowed and recaptured under this section is the percentage of the total federal credit that is disallowed or recaptured under Section 45D of the Internal Revenue Code.

(d) The Indiana economic development corporation shall submit a copy of the corporation's determination under this section to the department.

Sec. 23. (a) Before April 1 each year:

- (1) after the initial year that a federally qualified community investment entity is certified as a certified development entity; and
- (2) before the fifteenth year after the last credit allowance date for the certified development entity's last state certified investment;

the certified development entity shall submit a report to the Indiana economic development corporation on the certified development entity's state credit program under this chapter.

(b) The report required by this section must include the following:

- (1) Information on the number and amount of state certified investments and federally qualified equity investments made by the entity in Indiana.
- (2) A description of each certified business receiving an investment attributable to a state certified investment.
- (3) An update on the financial status of the certified businesses.
- (4) An update on new jobs, increasing wages, total investment, and revenue impact derived from the state certified investment.
- (5) The sum of the state credits designated by the certified development entity under this chapter.

(c) A copy of the report required by this section shall be submitted to the president of the Indiana economic development corporation and the executive director of the legislative services agency. The report submitted to the executive director of the

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legislative services agency must be in an electronic format under IC 5-14-6.

**Sec. 24.** Before November 1 in each state fiscal year beginning in an odd-numbered year, the Indiana economic development corporation shall provide an evaluation of the state credit program. The evaluation must include an assessment of the:

(1) effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and

(2) revenue impact of the certified development entity's state credit program.

The evaluation may include a review of the practices and experiences of other states with similar programs or other similar federal programs. The president of the corporation shall submit the evaluation to the governor and the executive director of the legislative services agency. The report submitted to the executive director of the legislative services agency must be in an electronic format under IC 5-14-6.

**Sec. 25.** The Indiana economic development corporation may adopt rules under IC 4-22-2 that the corporation determines are necessary to carry out the purposes of this chapter, including rules to do the following:

(1) Facilitate the transfer of state credits earned under this chapter.

(2) Certify an investment for a state credit before the investment has received final approval for a federal credit, subject to the condition that the state credit is disallowed if the federal credit is not granted.

SECTION 2. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]

(a) The definitions in IC 6-3.1-31, as added by this act, apply throughout this SECTION.

(b) IC 6-3.1-31, as added by this act, applies only to:

(1) federally qualified equity investments initially made; and

(2) taxable years beginning;

after December 31, 2006.

SECTION 3. An emergency is declared for this act.

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